

## Extract from the Second Report by the Committee of Independent Experts on the Commission (10 September 1999)

**Caption:** Analysis of current practice and proposals for tackling mismanagement, irregularities and fraud.

**Source:** Europarl - Committee of Independent Experts. [ON-LINE]. [s.l.]: European Parliament, [04.12.2001].

Disponibile sur [http://www.europarl.eu.int/experts/default\\_en.htm](http://www.europarl.eu.int/experts/default_en.htm).

**Copyright:** (c) European Parliament

**URL:**

[http://www.cvce.eu/obj/extract\\_from\\_the\\_second\\_report\\_by\\_the\\_committee\\_of\\_independent\\_experts\\_on\\_the\\_commission\\_10\\_september\\_1999-en-1a6ea74f-2830-460b-a58f-62ca86d4ce10.html](http://www.cvce.eu/obj/extract_from_the_second_report_by_the_committee_of_independent_experts_on_the_commission_10_september_1999-en-1a6ea74f-2830-460b-a58f-62ca86d4ce10.html)

**Publication date:** 22/10/2012

## Second Report by the Committee of Independent Experts on Reform of the Commission

### Analysis of current practice and proposals for tackling mismanagement, irregularities and fraud

[...]

#### 1. Introduction

##### 1.1. The Mandate

1.1.1. In its First Report, and in accordance with the mandate it was given for the first phase of its work <sup>1</sup>, the Committee of Independent Experts (henceforth ‘the Committee’), addressed the issue of individual responsibilities of members of the Commission relating to certain allegations of fraud, mismanagement and nepotism.

1.1.2. Following publication of the First Report of the Committee on 15 March 1999 and successive events, at its meeting of 22 March 1999 the Conference of Presidents of the European Parliament considered and approved a note on the terms of reference for the Committee’s second report. Specifically, it mandated the Committee as follows:

“In the light of the findings of the first report (...), it is proposed to mandate the Committee to produce its second report, concentrating on formulating recommendations for improving:

- *procedures for the awarding of financial contracts, and of contracts for interim or temporary staff, to implement programmes;*
- *the coordination of Commission services responsible for detecting, and dealing with fraud, irregularities and financial mismanagement (and, particularly, internal auditing departments, and financial control);*
- *the application and, possible, the adaptation of the Staff Regulations, to facilitate the holding of officials to account in cases of fraud and mismanagement.”*

1.1.3. The following day the European Parliament adopted a resolution confirming the mandate of the Committee in the following terms:

*“Looks forward to the second report by the Committee of Independent Experts containing a more wide-ranging review of the Commission’s culture, practices and procedures and in particular its concrete recommendations for strengthening these procedures and any other appropriate reforms to be considered by Commission and Parliament; this report should deal amongst other issues with procedures in existence for the awarding of financial contracts and of contracts for interim or temporary staff to implement programmes, with procedures for following up allegations of fraud, mismanagement and nepotism (detection and treatment), and with the treatment by the Commission of cases of fraud, mismanagement and nepotism, involving staff; this report must be finished by the beginning of September 1999.”* <sup>2</sup>

1.1.4. In preparing its Second Report the Committee has adhered to the terms of this mandate. The report therefore deals the “culture, practices and procedures” of the Commission, with an eye to formulating

recommendations for reforms in the areas encompassed by its mandate, namely financial procedures, control mechanisms, personnel management, measures aimed at combating fraud, etc. By the same token, the Second Report does not seek — by contrast with its First Report — to attribute individual responsibilities. Cases cited in the present report serve simply as illustrations of the wider points the Committee wishes to make.

1.1.5. The approach taken by the Committee was formally communicated to the President of the European Parliament by its Chair by letter on 3 August 1999:

*“Everything relating to the individual or collective responsibilities of the Commissioners was said in the first report submitted on 15 March 1999. The second report will not in any way go back over this type of question... Nothing it contains will be of a kind to call into question past responsibilities. It will be devoted to analysing the procedures and systems set up by all those involved in the European Union — Institutions and Member States — to combat fraud, and will endeavour simply to present analyses and recommendations in order to increase their effectiveness.”*

1.1.6. In keeping with this approach, the Committee does not in the present report pursue, re-examine or update any of the cases analysed in its First Report.

## 1.2. Structure of Second Report

1.2.1. The subjects covered by the Second Report are determined by the mandate outlined above. The Report comprises a brief introduction, six substantive chapters, each containing specific recommendations, and some brief concluding remarks. [...]

1.2.2. The chapters of the Second Report are as follows (\*):

Chapter 1: Introduction

Chapter 2: Direct Management

Chapter 3: Shared Management

Chapter 4: The Control Environment

Chapter 5: Fighting Fraud and Corruption

Chapter 6: Personnel Matters

Chapter 7: Integrity, Responsibility and Accountability in European Political and Administrative Life

Chapter 8: Final Remarks

## 1.3. Working methods and language

1.3.1. As in the first phase of its work, the Committee worked independently of both the European Parliament and of the Commission. It therefore adopted its own working methods and procedures. It has continued to operate on the basis of the agreements already in place concerning the availability of Commission officials to appear before the Committee and the provision of documentary information on request. The Committee thanks all those who have contributed through the statements they gave and the information they provided to the formulation of the ideas set out in this report.

1.3.2. The constituent parts of this report were drafted and adopted in one or the other of the Committee's two working languages: English and French. The Committee declines any responsibility for language

versions other than the originals, translation of the text being a matter for the European Parliament. [...]

\*\*\*\*\*

## **Recommendations of the Committee of Independent Experts**

### **Chapter 2**

*A genuine contracting philosophy, a remodelled legislative, regulatory, and budgetary frame of reference, and greater responsibility entrusted to authorising officers should help to restore order to the Commission's management, in which the most disturbing anomalies have been brought to light by the TAO phenomenon.*

#### **Recommendation 1**

The Commission should treat contracts as a whole as a priority in their own right in order to make for the utmost transparency. Instructions should be laid down and proper training provided. Community public procurement law is marred by a jumble of disparate source texts. Its codification is a matter to be studied, without seeking to overregulate, but rather to achieve rationalisation to facilitate the work of practitioners (see 2.1.17.) (\*).

#### **Recommendation 2**

Given that it is not suited to the requirements of modern management and effective supervision, the Financial Regulation is in need of fundamental revision. In any event, it should form part of a clear-cut hierarchy of Community acts and be confined to the essential principles which all institutions must observe. As regards the details, it should make reference to specific rules applying to each institution (see Chapter 2 as a whole).

#### **Recommendation 3**

Conclusion of a contract — following an invitation to tender or by a negotiated procedure — funding of a project under the heading of external aid, or award of a subsidy are different forms of disbursement of Community moneys. The Financial Regulation should accordingly lay down the basic rules to be observed by all institutions, namely transparent decision-making, non-discrimination, and *ex post* assessment of use, and dispel the fundamental confusion as regards contracts. The concept of a contract and the different types of contracts should be spelled out (see 2.1.21. ff.).

#### **Recommendation 4**

The present budget nomenclature, based on the distinction necessitated by the Financial Regulation between Part A (administrative expenditure) and Part B (operating expenditure) is impracticable. It is frequently circumvented when appropriations are earmarked under the budget. A nomenclature based on policies whereby the aggregate cost of the latter would be specified and the various expenditure assigned for a given purpose would be identified according to its nature must be established in order to facilitate assessment and enable the budgetary authority to exercise complete supervision (see 2.1.15. to 2.1.19.).

#### **Recommendation 5**

Expenditure under the heading of cooperation with non-member countries is at present a self-contained, chaotic area, given the numerous and diverse legal rules by which it is governed. The principles deriving from Community Directives must apply not only to the public contracts awarded by the Commission itself, but also to those it awards as the agent of external recipients of Community funds (see 2.1.33. to 2.1.35.).

#### **Recommendation 6**

Rules must be laid down to govern subsidies. Since they entail a quid pro quo, and are awarded for that reason, they should be treated in the same way as contracts as regards the award procedure (putting up for tender), supervision (consideration by the CCAM), and administration (monitoring by means of databases) (see 2.1.40.).

### **Recommendation 7**

The serious gap in terms of the membership of the assessment committee has to be remedied (see 2.1.28.).

### **Recommendation 8**

Intellectual service contracts must be systematically planned. Human and financial resources should not be scattered over a myriad of contracts too small to be overseen, the different procedures must be properly understood, accurate definition of the subject of the contract should be treated as a matter of crucial importance, and the Commission must have the means to monitor the proper execution of contracts (see 2.2.17. to 2.2.48.).

### **Recommendation 9**

The Commission should ask its contractors and special interest groups, where applicable, to specify the membership of their board of directors and the identity of their shareholders. Both to educate them and to treat them absolutely equally, it must allow unsuccessful bidders to consult the documents relating to a tender procedure (see 2.2.36. to 2.2.38. and 2.2.60. to 2.2.63.).

### **Recommendation 10**

Authorising officers must be responsible, consider themselves responsible, and held responsible. Their role should be enhanced, for instance by offering them the necessary guarantees of independence, or indeed certain career advantages, and all the requisite training and information. Their disciplinary and financial liability must not remain a purely theoretical possibility. The fact that a decision to commit expenditure is separate from the signing of the commitment proposal runs counter to a sense of responsibility. The authorising officer and the signatory to a contract (the only instrument legally binding on the Commission in relation to third parties, whereas commitment is merely an internal decision) must be, if not one and the same person, at any rate close associates (see 2.2.49. to 2.2.59.).

### **Recommendation 11**

The Commission, or a Member whom it has empowered to act, must be debarred from acting as authorising officers (see 2.2.58.).

### **Recommendation 12**

Authorising officers should be advised more extensively where contracts are concerned. The Central Contracts Unit, recently set up by the Commission, should accordingly be equipped with increased human resources in order to provide the necessary prior assistance to authorising officers to help them compile the requisite documents and thereafter monitor the execution of the main contracts and draw the appropriate conclusions to enable constant adjustments to be made to the rules. The unit thus needs to be acquainted, through the Advisory Committee on Procurements and Contracts (CCAM), with the most important or typical contracts. Its representatives should therefore serve on the committee and constitute the principal technical element (see 2.2.75. to 2.2.77.).

### **Recommendation 13**

The CCAM, which at present does no more than carry out near-routine implementation checks and is slowing down what is already an excessively cumbersome procedure, has to be reformed. Very strict limits

should be imposed on the number of matters considered. Draft contracts should be selected under the personal responsibility of the chairman of the CCAM, assisted by the secretariats of the committee and the Central Contracts Unit, working in synergy. Contracts not selected must be abandoned immediately, and, instead, those few matters deemed to serve as example should be studied in depth. In hierarchical terms, CCAM meetings should take place at a sufficiently high level, but not so high that full members would more often than not be prevented from attending. The CCAM must be constituted as a joint body in order to provide a forum for dialogue between administrative and operating DGs. Opinion thresholds should be raised substantially, broadly according to the types of contracts (see 2.2.78. to 2.2.98.).

#### **Recommendation 14**

The Commission must finally equip itself with a central database for contracts and contractors. If this cannot be done under the SINCOM system, the central departments should consider the alternatives (expansion of the CCAM database) in collaboration with the authorising officers (see 2.2.64. to 2.2.73.).

#### **Recommendation 15**

Since the Commission's management tasks are increasing in both number and range and the complement of officials cannot be expanded continuously to tackle them, a policy of outsourcing should be pursued. The use of private sector resources should be regulated so as to meet the requirements of public service. In addition, the committee believes that implementing agencies under the exclusive control of the Commission is an option deserving thorough consideration (see the entire section 2.3.).

### **Chapter 3**

*The extreme complexity of the legislation renders the EAGGF Guarantee section vulnerable to fraud and makes its control very difficult. The control of EAGGF Guarantee expenditure remains an important current issue despite the gradual reduction in the EAGGF Guarantee section's percentage share of the total Community budget. Sensitive sectors such as export refunds and direct income support are also key sectors which merit the Commission's particular attention. The recent clarification of the respective responsibilities of the Commission and the Member States for payments and control may have a positive impact if given the correct follow-up. The clearance of the accounts with the Member States is the final, overall management act by the Commission in its exercise of control over expenditure by the Member States under the Commission's responsibility. The findings of the Court of Auditors annual Statements of Assurance suggest that there should be an increase in the amounts recovered through the Clearance of Accounts.*

#### **Recommendation 16**

All decisions taken by the Commission in the EAGGF Guarantee area, either as an administration or as a college, must be taken in conditions of complete independence. The Commission must ensure that the Clearance of Accounts unit can work independently and without being subject to any inappropriate external or internal pressure or influence (3.12.3.-4.).

#### **Recommendation 17**

The Commission should ensure a more stringent application of the provisions of Regulations 1287/95 and 1663/95 which deal with the accreditation of paying agencies and the certification of their accounts (3.9.8.-3.9.10.).

#### **Recommendation 18**

The Commission should make full use of its right of on-the-spot controls in the Member States for accounting and compliance clearance and exclude from the certified accounts those amounts relating to accounting errors and underlying transactions which are irregular (3.10.6.).

**Recommendation 19**

Where systematic weaknesses are found higher rates of flat rate correction for the amounts to be recovered should be applied (3.8.6., 3.12.2.).

**Recommendation 20**

There remains scope to recover greater amounts through a reinforced clearance effort. To this end the Clearance of Accounts unit needs a further increase in staff to allow a wider coverage each year and checks through to the level of the final beneficiary. It should set a target for amounts recovered linked to the error rates found by the Court of Auditors in its annual Statements of Assurance (3.12.2.).

**Recommendation 21**

Interest should be charged by the Commission from the date of payment by the paying agency on those amounts recovered which have been subject to the conciliation procedure (3.11.1.–3.11.5.-6.).

**Recommendation 22**

The threshold for amounts in dispute which can be presented to the Conciliation body should be increased if need be by expressing it as a fraction of the value of the average transaction in each Member State (3.11.3.).

**Recommendation 23**

The Commission should seek to reduce the length of time taken in the clearance procedure by reducing the number of steps and in particular the number of distinct occasions which Member States have to comment on proposed recoveries and the Commission's observations leading to them (3.10.9.).

**Recommendation 24**

The Commission should ensure that the cycle of Clearance of Accounts' inspection of market and direct payment regimes is short enough to guarantee that all major areas are covered in a 24-month period in view of Article 1 of Regulation 1663/95 (3.10.7.).

**Recommendation 25**

In the new system the compliance clearance decisions can refer to transactions in different years. The Commission should therefore ensure that in the interests of transparency its records and reporting show how much is recovered through compliance clearance for payments made for each accounting year (3.10.5.-8.).

**Recommendation 26**

The Commission should pay particular attention to the area of export refunds differentiated by destination and ensure that guarantees are recovered in full when frauds are uncovered (3.13.2.-5.).

**Recommendation 27**

The Commission should give priority to ensuring the proper implementation and correct application of the Integrated administrative and control system (IACS) (3.13.6.-7.).

*The size of the Structural Funds means that day-to-day control of expenditure must be exercised by the Member States. The fact that the division of responsibilities between the Commission and the Member States has recently been clarified in legislation does not mean that the right balance in the division of responsibilities has been struck. A certain number of factors tend to divest the Member States of responsibility. The Commission must ensure that the Member States have put in place effective control*

systems.

### **Recommendation 28**

There has to be a strengthening of control within the Commission through reinforced internal control units in the Directorates-General. This is necessary to avoid the Commission being almost entirely dependent on the Member States for information on implementation and irregularities and the subsequent possibilities of pursuing these. This recommendation accords with proposals made in Chapter 4 of this report concerning decentralised financial control and modern internal and professional auditing (3.17.2.-9.).

### **Recommendation 29**

Checks by the Commission in the Member States must be reinforced both in number and in quality, that is to say they should go beyond checks which lead simply to the provision of advice by the Commission and an exchange of views. Checks should be designed to result in the detection of irregularities and consequently in financial corrections. They should be most frequent in countries and regions with relatively weak administrative structures. This implies more Commission resources devoted to control in the Member States. This implies stronger and more effective control by the Commission of such structures in all the Member States (3.17.2.-9.).

### **Recommendation 30**

The number of administrative units involved in the management of the Structural Funds should be decreased and not increased. To this end the EAGGF Guarantee Directorates in DG 6 should have no role in rural development measures which should be left to the Guidance Directorates. The Committee's view is that only one Directorate-General should have responsibility for the new objectives 1 and 2 (3.21.1.-2.).

### **Recommendation 31**

The use of diverse national rules to determine project eligibility if compatible with the provisions of the Treaties, should be carefully monitored by the Commission to ensure equality of treatment in respect of Structural Fund assistance for all citizens of the Union. Where the national rules cannot ensure this then the Commission should come forward with one or more additional eligibility datasheets to function as guidance notes (3.18.5.).

### **Recommendation 32**

The Commission should refuse to accept over-declarations for reimbursement from Member States and return them for proper presentation (over-declaration occurs where Member States in claiming submit more expenditure than their entitlement leaving to the Commission the task of selecting eligible expenditure from within this larger sum). It is the Member State's responsibility to present its claims for payment in a transparent and detailed way so that all parties can be satisfied that the expenditure concerned was eligible and its effects can be evaluated (3.18.1.-4.).

### **Recommendation 33**

Member States should inform the Commission of all project substitutions and their value. The Commission should systematically retain this information to form an overview of the integrity and coherence of the programmes. Member States should prepare for comparison the initial proposal without substitutions with the final outcome with substitutions. This would allow the Commission to intervene to assess certain instances of re-use and to ensure it may recover sums unduly paid from the Community budget (3.18.1.-4.).

### **Recommendation 34**

If the reforms referred above at paragraphs 3.24.1. and 3.24.6. were not to be implemented, the Commission



should take the initiative by preparing a distinct legislative proposal.

## Chapter 4

*The existence of a procedure whereby all transactions must receive the explicit prior approval of a separate financial control service has been a major factor in relieving Commission managers of a sense of personal responsibility for the operations they authorise while at the same time doing little or nothing to prevent serious irregularities of the sort analysed in the Committee's First Report. Moreover, the combination of this function with a (weak) internal audit function in a single directorate-general gives rise to potential conflicts of interest on the part of the Financial Controller. Thus a serious rethink of both internal control and internal audit is necessary.*

### Recommendation 35

A professional and independent Internal Audit Service, the competences and activities of which should be based upon the relevant international standards (Institute of Internal Auditors), should be established, reporting directly to the President of the Commission. The centralised pre-audit function in DG XX should be dispensed with and internal control — as an integrated part of line responsibility — decentralised to the directorates-general. One of the principal tasks of the proposed Internal Audit Service should be to audit the efficiency and effectiveness of these decentralised control systems (c.f. Recommendation 49 below) (4.7.1.-2., 4.9.8., 4.13.3., 7.).

### Recommendation 36

Chains of delegation should be made clear and explicit: every subordinate manager is responsible and accountable for internal control in his/her field of responsibility. It is for the director-general (and heads of independent services) to assume (overall) responsibility for all operational matters in her/his directorate-general or service, including for internal control. The chain of delegation begins at the level of the Commission through the commissioner. She or he thus holds ultimate managerial responsibility for all financial matters, including for financial control, and political responsibility as a member of the College (4.9.5.-9.).

### Recommendation 37

Each directorate-general should have at its disposal two basic prerequisites for effective financial management: (i) a specialised internal control function, exercised under the responsibility of a senior official reporting directly to the director-general; (ii) an accounting function, exercised under the responsibility of a delegated accounting officer. The latter would work under the functional supervision of the Commission's accounting officer, but be responsible for keeping the accounts and processing the financial operations exclusively of the directorate-general in which it is located.

### Recommendation 38

Each directorate-general should produce its own annual financial report and accounts, audited by the Commission's internal auditor, including both financial information and a wider review of the directorate-general's activities. These reports should be examined first by the Commission, which should then submit them to the competent institutions as part of the discharge procedure (4.9.13.-17.).

### Recommendation 39

The Internal Audit Service should act under the responsibility and authority of the President of the Commission, independently of any other Commission service. It should above all be a diagnostic tool in the hands of the President, enabling him/her to identify structural and organisational weaknesses in the Commission. The competences, objectives, powers and status of this Service should be set out in a basic founding document (a "charter"). The work programme of the Internal Audit Service should ensure periodic

coverage of all Commission activities. It should however leave headroom for additional *ad hoc* audit tasks to be carried out at the request of the President and/or on the basis of needs arising (4.13.3., 7., 9.).

#### **Recommendation 40**

The Head of the Internal Audit Service should be a highly qualified and experienced member of the auditing profession, recruited specifically for this task. S/he should hold an administrative grade equivalent to that of a director-general. The Head of the Internal Audit Service, though reporting to the President, should enjoy full independence as to the conduct of audits, the maintenance of professional standards, the contents of reports, etc (4.13.8).

#### **Recommendation 41**

The internal contradictory procedure between the Internal Audit Service and its auditees should last at most one month, whereafter publication of the audit report should take place at the discretion of the Head of the Internal Audit Service (4.13.11.-12.).

#### **Recommendation 42**

The President of the Commission should present to the Commission each year an annual report of the Internal Audit Service, outlining its activities, principal findings and the action taken, or to be taken, by the President as a result. This report should be made public (4.13.13.-14.).

#### **Recommendation 43**

All audit reports of the Internal Audit Service should be sent to the Court of Auditors. Additionally, all data collected by the Service, all preparatory work and audit findings should be available to the Court and be of sufficient professional quality to be used by it (4.13.15.).

#### **Recommendation 44**

The present General Inspectorate of Services (IGS) should be integrated into the new Internal Audit Service.

#### **Recommendation 45**

A central specialised unit, responsible for the formulation and oversight of financial procedures and internal control mechanisms should be constituted within DG XIX. This body should have no role in individual transactions (though it could, in difficult cases, offer advice), but should establish Commission-wide procedures and ground rules for financial management and monitor their application (4.9.1.-3.).

#### **Recommendation 46**

All officials involved in financial procedures should undergo compulsory and regular training in the rules and techniques applying to financial management as a precondition of being allocated such work (4.9.1.-2., 4., 11.).

#### **Recommendation 47**

The formal aspects of financial transactions should be verified by the delegated accounting officer. Any objections should be referred back to the authorising officer, who should decide, on his/her own responsibility, whether to overrule the objections and proceed with the operation (4.9.12.).

#### **Recommendation 48**

A new and specific administrative procedure should be established, governed by (an amended) Title V of the

Financial Regulation, designed formally to establish the individual responsibilities and/or liabilities of authorising officers in respect of financial errors and irregularities. To this end, a new Financial Irregularities Committee would deliberate on the basis of reports from the Commission's internal auditor. Disciplinary or other action could follow if necessary (4.9.18.-28.).

#### **Recommendation 49**

In the light of the foregoing recommendations, the existing DG XX no longer has any reason to exist. DG XX staff qualified for audit work should be redeployed to the new Internal Audit Service, while other staff should be redeployed, as needed, to other Commission services, notably those requiring expertise in financial procedures (4.15.1.-2.).

#### **Recommendation 50**

The Court of Auditors could seek to obtain a more constructive reaction on the part of the Commission to its audit observations through greater recourse to department-based auditing, presenting its observations in a more analytical style, giving an overview of the situation it encountered and placing greater emphasis on the management needs of the Commission (4.16.4.).

#### **Recommendation 51**

It would be helpful if the Court were able in its Statement of Assurance ("DAS") to indicate with greater precision which sectors, systems and procedures, and, in the case of shared management, which Member States, are mainly affected by errors, and the nature of the errors concerned (4.16.5.).

#### **Recommendation 52**

The duration of the contradictory procedure between the Court of Auditors and the Commission (and other auditees) should be considerably shortened. The process should not assume the nature of a negotiation on the severity or otherwise of the Court's observations but seek only to establish the facts. The underlying purpose of the Court's audits should be to identify the remedial management action required in the Commission to address the issues identified by the Court (4.16.7.).

### **Chapter 5**

*The Committee found that the current legal framework for combating fraud against the financial interests of the European Communities is as yet incoherent and incomplete, largely because the Commission (i.e. UCLAF/OLAF) possesses only administrative law powers and competences, which however have important implications in the area of criminal law. Thus the existing framework (i) fails to recognise and accommodate the true nature of UCLAF/OLAF, (ii) leaves the legal instruments for the investigation, prosecution and punishment of fraud ineffective and (iii) fails to provide sufficient guarantees of individual liberties.*

#### **Recommendation 53**

The independence of OLAF vis-à-vis the Commission in particular must be and remain a fundamental point of principle if the organisation is to play its role, which is substantially of criminal investigation, fairly and effectively (5.11.4.-8.).

#### **Recommendation 54**

OLAF must earn the respect, and thus wholehearted cooperation, both of EU institutions and personnel and of Member States' investigative and judicial authorities through ensuring that its inquiries are — and are seen to be — independent, rigorous, objective, procedurally correct, reasonably rapid and ultimately productive of results (5.9.4.-7.).

**Recommendation 55**

OLAF's activities must be subject to the supervision of a judicial authority in order to guarantee due legal process in the course of investigations and the protection of the civil rights of persons affected, directly or indirectly, by inquiries. In this context, the existing Supervisory Committee of OLAF, though fulfilling a useful transitional role, cannot be considered adequate and should be replaced by a special chamber of the Court of First Instance created for this purpose (and, on appeal, also by a chamber of the Court of Justice) (5.12.5.–5.12.9.).

**Recommendation 56**

With a view to its role as a central data and criminal intelligence collation point, OLAF must take action to overcome the failings of UCLAF (identified by the Court of Auditors in particular) in the exploitation of information technology. While respecting the data protection requirements of Community and Member State legislation, it should also do the utmost to maximise the potential synergies with national authorities and with Europol in this area (5.9.5., 5.11.10.).

**Recommendation 57**

OLAF must possess adequate human resources to deal with its case-load at least as effectively as an equivalent Member State service. It should also ensure that certain lacunae in the staffing of UCLAF are remedied, notably through the recruitment of adequate specialist expertise, beyond its core investigative personnel, in the fields of (a) auditing, especially “forensic accountancy”, (b) information technology, (c) prosecution and (d) judicial procedures in Member States. All OLAF staff should moreover be selected strictly on the basis of their suitability for OLAF's purposes, which should preclude any “automatic” transfer of UCLAF staff to the new organisation (5.11.9.-13.).

**Recommendation 58**

In preparation for the introduction of the new legal framework described hereafter, the Member States should (i) ratify the Convention on the protection of the financial interests of the European Communities (ii) further develop common definitions of relevant criminal offences and procedures, and (iii) formally agree common standards of criminal investigation within the context of the European Convention on Human Rights (5.13.2.).

**Recommendation 59**

With the foregoing principles in mind, the Committee recommends a three-stage introduction of a new legal framework for the prosecution and punishment of criminal offences affecting the financial interests of the European Communities in accordance with the proposal set out in this report (section 5.13.), summarised as follows:

- *Stage 1: Appointment of an independent European Public Prosecutor (EPP)*. The EPP would hold unrestricted jurisdiction (i.e. without the obstacle of official immunity or confidentiality) for offences committed by members and officials of EU institutions and bodies. S/he would work closely with the Director of OLAF and prepare prosecutions as appropriate. Prosecutions would be referred to the appropriate national court. The legality of OLAF investigations and of EPP decisions would be supervised by a special chamber of the Court of First Instance (5.13.4.).
- *Stage 2: Creation in each Member State of a national Prosecution Office for European Offences (POEO)* which would be competent for its entire territory. A POEO would be established within each national prosecution service specifically to deal with cases wholly or partially affecting the financial interests of the European Communities. POEOs would act through national police forces and before national criminal courts

in conformity with national criminal procedure. The legality of the POEO's activities would be supervised in each Member State by a single court, the same court at which it is located. (5.13.5., 7.) The EPP would receive from OLAF all information liable to give rise to criminal proceedings and be responsible for referring it, with appropriate advice, to the appropriate POEO. The EPP would moreover act as liaison between the POEOs of different Member States, notably advising them on possible conflicts of jurisdiction on cases involving more than one Member State and making recommendations for their resolution. The EPP would report annually to the EU institutions on its activities and on the action taken by the POEOs as a result of its recommendations (5.13.6.).

— Stage 3: Creation, on the basis of the EPP and POEOs, of a single, indivisible European Prosecution Office (EPO) with delegated public prosecutors in the Member States holding jurisdiction for all offences affecting the financial interests of the European Communities. The EPO would operate through OLAF and national investigation units. In terms of EU fraud, this stage of the reform would create the single “area of freedom, security and justice” foreseen by the Treaty (TEU Art. 29) (5.13.7.).

### **Recommendation 60**

Preparation of the three-stage introduction of a new legal framework should begin immediately and implementation achieved within the following timescale:

First stage: within one year,

Second stage: as soon as possible thereafter,

Third stage: to be agreed at the next Intergovernmental Conference (IGC), or at an *ad hoc* IGC shortly thereafter (5.13.9.-10.).

### **Chapter 6**

*An in-depth reform of Staff policy is required. Practices and procedures must be changed in order to ensure that the Commission can operate effectively and retain its traditional role as the driving force behind European integration. What is really required is not an overhaul of the Staff Regulations themselves, but simply correct application of the rules and principles set out therein.*

*The Commission should vigorously enforce the principle of the recognition of merit. This will improve standards throughout the organisation, which will in turn serve as an example to all and lead to a positive atmosphere at all levels of the hierarchy.*

***With this in mind the Commission should formulate a dynamic careers policy so as to foster greater commitment and ambition in its staff and head off all risk of stagnation.***

### **Recommendation 61**

Proper social and trade union relations within the Commission are essential. The Administration must recognise the role played by the trade unions, but the latter must in turn avoid any temptation to set up a kind of alternative hierarchy and must focus on the responsibilities they exercise which are crucial to the success of the plan to change and modernise the European civil services (62.34.-38.).

### **Recommendation 62**

The significance of national balances within the Commission should be reduced by: designing professional

training courses in such a way as to strengthen the 'European' nature of the civil service in the institutions; encouraging the genuine 'multinationalisation' of Commissioners' cabinets; reconsidering the number of tasks and their distribution among the Directorates-General, according to real needs, rather than national balances; making 'national quotas' more flexible; and rotating staff more frequently (6.2.18.-33.).

### **Recommendation 63**

Training and professional conversion should be seen as an ongoing process, starting with the probationary period and forming a regular, compulsory element throughout an official's career. The Commission should step up the financial resources allocated to training measures (6.3.6.-14.).

### **Recommendation 64**

Mobility should be encouraged and no exceptions should be made. It should be made compulsory to change posts at the end of a given period of time. This means that flexibility is a quality which is valued and rewarded in terms of promotion. Furthermore, mobility should be an essential precondition for duties involving leadership or management of staff (6.3.15.-18.).

### **Recommendation 65**

Empowerment of staff requires that everyone's duties should be clearly defined and that the efforts made and the results obtained by each official in carrying out the duties allocated to him are recognised, encouraged and rewarded (6.3.19.-22.).

### **Recommendation 66**

Decentralisation plays an important role in enhancing the sense of responsibility felt by staff. However, the tasks that are decentralised must be clearly defined and effective. Thus the practice of creating or maintaining posts with no real responsibilities (or corresponding workload) should be regarded as contrary not only to the rationality and effectiveness of the system but also to the principle of empowerment. Decentralisation should not become synonymous with confusion. The process of decentralisation must be accompanied by a reinforcement of programming and internal coordination and genuine leadership must be exercised (6.3.23.-25.).

### **Recommendation 67**

The practice under which 'other servants' of the Commission — in particular, temporary staff — have 'permanent temporary status' should be brought to an end. Temporary staff should be appointed to permanent posts, which would oblige them under the Staff Regulations to leave within three years. At the same time, the list of temporary posts should be gradually reduced (6.4.22.-27.).

### **Recommendation 68**

The use of external help should be reduced so as to decrease the institution's dependence on external staff, who should be used only in exceptional circumstances, on the basis of better regulated conditions and procedures (6.4.28.-41.).

### **Recommendation 69**

The system of open competitions for the recruitment of Commission staff should be thoroughly reviewed, since the number of candidates has increased considerably over time and the procedures followed have proved inadequate. One might consider decentralising pre-selection tests in each Member State, and extending the practice of holding specialist competitions with more precise job descriptions, and holding competitions for each language.

*In order to eliminate the lack of transparency in practice which occurs between drawing up the reserve list and recruitment, a list of candidates who have passed a competition should be published in order of merit reflecting the results of the competition. Any divergence from the order on the list when the actual recruitment takes place should be justified and made public.*

Internal competitions for the establishment of temporary staff should be abolished. On the other hand, internal competitions to enable officials to move from one category to another should be retained (6.5.4.-25.).

#### **Recommendation 70**

A reform of the staff reports and promotions system is necessary in order to restore the credibility of the selection process and the career structure. To that end there is a need to strengthen the assessment culture, review the form of the reports and simplify their headings, draw more specific and balanced assessment criteria, award more clearly differentiated marks and provide more detailed comments with better justifications, and encourage more active and responsible participation by the officials concerned.

*One might even consider a system of internal competitions for a limited number of available posts, particularly for professional and managerial staff, whose appointments are decided upon by a flexible procedure which is thus open to dangers of favouritism. This competition, based on qualifications and examinations, and carried out by external selection boards or chaired by an external examiner, would [give] the most ambitious and motivated officials an alternative means of trying their chances other than promotion under the Staff regulations (6.5.28.-42.).*

#### **Recommendation 71**

Over the years rather serious shortcomings have been revealed in the appointment of senior officials (A1 and A2). It is essential to establish rules, or at least a code of conduct, for their recruitment. As for national balances, one might consider gradually increasing the flexibility of quotas, placing a time-limit on the term of office, or banning the appointment of a successor of the same nationality. As for the recruitment arrangements, more rigorous selection criteria and more transparent procedures should be introduced within these quotas.

Although improvements will have to be made later, as regards the procedure to be followed, and the criteria and arrangements for selection, the Committee considers that the reforms envisaged by the new Commission are a step in the right direction (6.5.43.-58.).

#### **Recommendation 72**

Professional incompetence should be the subject of a more clear and precise system of rules. A procedure distinct from the one for disciplinary hearings should be introduced (6.5.61.-66.).

#### **Recommendation 73**

Practice in the field of disciplinary responsibility should be amended. It has shown severe limitations in terms of effectiveness and speed, with negative consequences for the European civil service and its image.

In particular:

- the rules on the formal conditions and procedural arrangements, as well as the protection of individual rights, should be specified;
- the membership of the disciplinary board should be much more stable and less internal to the Commission, particularly its chairman. An interinstitutional disciplinary board might also be a possibility.

The idea of entrusting the part of the procedure which currently takes place before the disciplinary board to an external body should also be considered, particularly as regards the higher grades;

— a member of the Appointing Authority should be involved in the work of the disciplinary board, at least for all the stages of the procedure at which the official and/or his representative are present;

— disciplinary scales setting out a relatively standard correspondence between errors and penalties should be set to prevent widely diverging penalties from being imposed for identical failings (6.6.11.-34.).

## Chapter 7

*The Committee considered that the codes of conduct elaborated by the Commission remain insufficient and are not yet backed up by the necessary legal framework. The attribution of responsibilities and chain of delegation between the Commission, single commissioners and the departments are ill-defined and ill-understood by those concerned. Finally, the concepts of political responsibility and accountability remain unclear and the mechanisms for their practical application inadequate.*

### Recommendation 74

The code of conduct for commissioners should redefine the concept of collective responsibility to encompass not only a prohibition on calling into question decisions adopted by the college, but also the right and the obligation of each commissioner to keep him/herself fully apprised of the activities of every other commissioner and to take action in this respect as necessary, for example by having frank and open discussions with other commissioners both inside and outside the college (7.5.1.-4., 7.10.1.-2.).

### Recommendation 75

Commissioners' *cabinets* should be limited to a maximum of six category-A officials. The commissioner must ensure that the *cabinet* is multi-national in character and rules must be introduced to exclude any unduly favourable treatment of *cabinet* members at the end of their service (7.5.7.-8.).

### Recommendation 76

Clear rules should be established as to the applicable criteria to the appointment of individuals to commissioners' *cabinets*, with a particular view to eliminating the possibility of favouritism based on personal relationships. Full transparency as to any personal relationship between a commissioner and a member of his/her *cabinet* must be ensured (7.5.9.-10.).

### Recommendation 77

Commissioners who use undue influence to favour fellow nationals or wider national interests in any sector for which they are competent are in serious breach of their obligation of independence, and should be subject to an appropriate sanction (7.5.9.-10.).

### Recommendation 78

Commissioners must carry out their duties with complete political neutrality. They should not be permitted to hold office in any political organisation during their term of office (7.5.11.-12.).

### Recommendation 79

The Commission must establish clear internal guidelines — to be made public — designed to ensure



maximum openness and transparency as to acts and decisions of the Commission once taken and the processes by which they were arrived at (7.6.3.-7.).

#### **Recommendation 80**

The rights and obligations of officials to report instances of suspected criminal acts and other reprehensible behaviour to the appropriate authorities outside the Commission should be established in the Staff Regulations and the necessary mechanisms put in place. The Staff Regulations should also protect whistleblowers who respect their obligations in this regard from undue adverse consequences of their action (7.6.8.-11.).

#### **Recommendation 81**

An independent standing “Committee on Standards in Public Life” should be created by interinstitutional agreement to formulate, supervise and, where necessary, provide advice on ethics and standards of conduct in the European institutions. This Committee on Standards should approve the specific codes of conduct established by each institution (7.7.1.-5.).

#### **Recommendation 82**

All Commission staff should undergo professional training aimed at raising awareness of ethical issues and providing guidance, from both a personal and management perspective, on how to deal with practical situations as they arise (7.7.6.-9.). The code of conduct on commissioners and their departments should establish that each commissioner is responsible both for policy formulation and the implementation of policy by his/her department(s). The commissioner shall therefore be answerable to the Commission as a whole for the actions of the department(s), and accountable to the European Parliament. Officials in departments shall answer to their director-generals, which shall in turn be accountable to the competent commissioner (7.9.1.-9.).

#### **Recommendation 83**

The Secretary-General should be considered as the prime interface between the political and administrative levels of the Commission. He/she should above all ensure that decisions of the Commission are effectively followed up by the administration (7.11.1.).

#### **Recommendation 84**

Members of *cabinets* should not be permitted to speak on behalf of their commissioners. The primary function of *cabinets* is to provide information and to facilitate communication vertically (between the commissioner and the services) and horizontally (between commissioners). In neither case should the *cabinet* prevent direct communication with the commissioner, but rather stimulate such communication (7.12.1.-6.).

#### **Recommendation 85**

The Commission is accountable to the European Parliament. To this end, it is under a constitutional duty to be fully open with Parliament, providing it with the complete, accurate and truthful information and documentation necessary for Parliament to carry out its institutional role, notably in the context of the discharge procedure and in connection with committees of inquiry. Access to information and documentation should only be refused in exceptional, duly motivated circumstances and in accordance with procedures agreed between the institutions (7.14.1.-13.).

#### **Recommendation 86**

The enforcement of the individual political responsibility of commissioners should be a matter for the

President of the Commission. The President should be empowered to dismiss individual commissioners, modify the attribution of responsibilities between them or take any other measure in respect of the composition or organisation of the Commission he/she deems necessary to enforce political responsibility. The President of the Commission shall be accountable to the European Parliament for any action (or inaction) in this context. These powers of the President should be made explicit in the Treaties, but, until this is possible, all commissioners should agree to abide by these principles (7.14.16.-22.).

### **Recommendation 87**

Any commissioner who knowingly misleads Parliament, or omits to correct at the earliest opportunity inadvertently erroneous information provided to Parliament should be expected to offer his/her resignation from the Commission. In the absence of an offer of resignation, the president of the Commission should take appropriate action (7.14.14.).

### **Recommendation 88**

The Council should give greater political priority to the preparation of its annual recommendation to the European Parliament on discharge, as this would reinforce the political status of the prime institutional mechanism whereby the Commission is held accountable for financial management (7.15.8.-9.).

### **Recommendation 89**

Council and Parliament should be bound by the principle of budgetary discipline to take into account the resource requirements attached to any policy initiative they request from the Commission. The Commission should be able to refuse to assume any new tasks for which administrative resources are not available and cannot be provided through redeployment (7.15.10.).

### **Recommendation 90**

The management of Community programmes, and in particular all questions of financial management are the sole responsibility of the Commission. Committees composed of Member State representatives should not therefore be empowered to take any decision relating to the ongoing financial management of programmes. Any risk that national considerations might affect financial management at the expense of sound financial management criteria should be excluded (7.15.11.-14.).

\*\*\*\*\*

[...]

## **8. Final remarks**

8.1. Throughout this report the Committee has sought, in accordance with its terms of reference, to analyse the specific, everyday management problems of the Commission. Nevertheless, now that it has completed its work, it feels obliged to say that the political and institutional dimension of the Commission's weaknesses are lurking just beneath the surface: often the Commission is only able to take half measures because it does not have the means, in particular the statutory means, to perform its responsibilities in full. It was not the Committee's task to suggest any institutional reforms that might be undertaken, yet it goes without saying that the Commission must have the means to perform its duties.

8.2. In this report, in accordance with its terms of reference, the Committee has considered management practices only at the Commission. However, both the Commission and the other Institutions could benefit from some of the recommendations made by the Committee. The fact that this analysis was confined to the Commission does not in any way relieve the other Institutions of the obligation to give thought to their own administrative and financial practices, on the way in which they slot into the system as a whole and on ways and means of improving the political culture of the Communities.

8.3. Another widespread problem that was frequently encountered is more cultural in nature: the Community civil service tends to favour planning and negotiation at the expense of management and monitoring which are less highly thought of. 'All material support will be provided' seems to be the watchword of a civil service which would prefer to think rather than to do. There are no specific ways of dealing with a problem of mentality, but the Committee believes it should encourage a process of reflection and internal discussion in this respect.

8.4. During the course of its work the Committee found evidence of many shortcomings in the way the Community civil service operates. However, the members of the Committee had the opportunity of meeting many Commission officials of widely differing levels of seniority and doing a great variety of jobs. In most cases the Committee were appreciative of their abilities, their spirit of public service and their sincere desire to play their part in the efforts needed to improve the system. This wealth of human resources is one of the major achievements of the Community. Maintaining it is one of the fundamental responsibilities of the Commission.

(\*) ENA note:

For full text including chapters, please see:

[http://www.europarl.eu.int/experts/default\\_en.htm](http://www.europarl.eu.int/experts/default_en.htm)

1. See first Report, section 1.1

2. Resolution B4-0327, 0328, 0329, 0330, 0331, 0332 and 0033/99 of 23.3.99, paragraph 4